

Subsection 13.3.100 – Procurement of Novelty Items for Distribution to the Public and/or to Federal Employees (January 2009)

This subsection was previously Section 13.2 of the Contracts Management Manual.

13.3.100.1 Purpose.

This policy provides guidance and frequently asked questions regarding novelty item purchases. Additionally, this policy assists those engaged in contracting activities in the proper documentation of procurement requests for novelty items.

13.3.100.2 Background.

Questions frequently arise concerning the procurement of small objects and souvenirs (collectively referred to as “novelty items”) for distribution to the general public and/or to federal employees. The purchase of novelty items must be based on the “necessary expense” rule. This is a rule of appropriations law which states that an expenditure not specifically provided for in an agency’s appropriation is permissible only if it is reasonably necessary to carry out an authorized function of an agency, or will contribute materially to the effective accomplishment of an agency’s function, and is not otherwise prohibited by law.

Under the “necessary expense” rule, EPA may not purchase novelty items unless the Agency program office documents that the distribution of novelty items will directly further the program offices mission. To establish a direct link to the Agency’s mission, a novelty item must be imprinted with Agency information. Agency information is typically an environmental message, the Agency program offices URL (or informational telephone number), or both. Imprinting a novelty item with only the EPA seal or Agency Identifier without additional Agency information is insufficient.

Even if a novelty item has Agency information imprinted on it, the program office must document that the Agency information contained on the novelty item outweighs the item’s relatively insignificant utility and cost. Generally, the higher the cost of an item and/or the greater its utility, apart from any message or information contained on the item, the more likely the impropriety of the expenditure. Please note that items with a unit acquisition cost of \$2.00 or less are considered inexpensive and are presumed to have insignificant utility unless the item is on the list of prohibited novelty items.

EPA has determined, as a matter of policy, that novelty items with a unit acquisition cost of \$2.00 or less have minimal utility and, therefore, meet the “necessary expense” test, if imprinted with Agency information and are not on the list of prohibited novelty items specified in 13.3.100.5.3 or as otherwise prohibited by law.

This policy was originally issued as Procurement Policy Notice (PPN) 95-01 dated April 10, 1995, from Betty L. Bailey, Director of the Office of Acquisition Management, to OAM Division Directors, Regional Contracting Officer Supervisors, and Ray Spears, OGC.

13.3.100.3 Authority/Applicability.

This policy addresses the purchase of novelty items to be distributed to the general public and/or to federal employees. It applies to contracting officers and purchase card holders.

The authority for this policy is 31 U.S.C. 1301(a) and the “necessary expense” rule of appropriations law. Among others, Section 6604(b) of the Pollution Prevention Act, 42 U.S.C. 13103(b), Sections 6002 and 8001 of the Solid Waste Disposal Act, 42 U.S.C. 6962 and 6981, respectively, and the National Environmental Policy Act, 42 U.S.C. 4332(2)(G), authorize EPA to use appropriated funds to provide useful environmental information to the public and federal employees in a manner that reduces sources of pollution and minimizes waste.

Appropriated funds may be used to purchase items (such as T-shirts, plaques, and portfolios with the EPA logo) for use as informal non-monetary awards for federal employees under the Government Employees Incentive Awards Act. However, those purchases are outside the scope of this policy.

Please consult EPA's Recognition Policy and Procedures Manual

([HYPERLINK "<http://intranet.epa.gov/ohr/rmpolicy/ads/manuals/3130-A2.pdf>"]) for information on non-monetary awards.

Similarly, the Agency has explicit or implicit authority under several statutes to promote environmental protection and use appropriated funds to purchase award items that recognize the stewardship achievements of non-federal entities. Those purchases are also outside the scope of this policy. Please consult with the Office of General Counsel on questions relating to EPA's environmental award statutes.

13.3.100.4 Definitions.

Green Novelty Item- A novelty item produced, distributed or used in an environmentally and ecologically friendly way (e.g., by using renewable resources or minimizing discarded waste).

Insignificant Utility - A novelty item having minimal or no personal usefulness.

Necessary Expense Rule – A rule of appropriations law which states that an expenditure not specifically provided for in an agency's appropriation is permissible only if it is reasonably necessary to carry out an authorized function of the agency, or will contribute materially to the effective accomplishment of an agency's function, and is not otherwise prohibited by law.

Novelty Item - A small, mass-produced object or souvenir of nominal value that is primarily used for outreach and educational purposes.

13.3.100.5 Policy.

13.3.100.5.1 General Policy

Contracting officers (COs) or any other authorized purchasers may, under certain circumstances,

purchase novelty items for distribution to the public and/or to federal employees. The novelty item must convey an environmental message consistent with an environmental statute. To do this, a novelty item must be imprinted with Agency information, typically an environmental message and/or a program offices URL (or information telephone number). Imprinting a novelty item with only the EPA seal or Agency Identifier without additional Agency information is insufficient. The purchase must be supported by the "necessary expense" rule.

The novelty item must be relatively inexpensive and have insignificant utility. Items with a unit acquisition cost of \$2.00 or less (including the pro-rated shipping cost and the production/printing cost) are presumed to have insignificant utility and cost. Novelty items with a unit acquisition cost of \$2.00 or less, however, must not be on the list of prohibited items. For a list of prohibited novelty items, see Section 13.3.100.5.3.

13.3.100.5.2 "Green" Novelty items

If an item's cost is more than \$2.00, but less than \$6.00, and an item has some utility, a program office may be able to demonstrate that tangible benefits for source reduction under the Pollution Prevention Act or RCRA 8001 if waste minimization or preference for recovered materials will be achieved through the purchase of the particular items. A program office may also be able to demonstrate that a novelty item is a component of a broader effort to promote source reduction practices by businesses or other federal agencies. These environmental considerations may overcome what otherwise may be an item's relatively high cost and utility. Under these circumstances, the \$2.00 per item limitation on novelty items can be waived unless the item is on the prohibited items list.

13.3.100.5.3 Prohibited Items

The list below provides examples of items which EPA finds possess a high cost and/or significant utility, apart from any message or information conveyed or are prohibited by statute (i.e., food). Purchase of the items listed below for distribution to the general public or federal employees is prohibited.

Examples include, but are not limited to the following:

- Toys (e.g. Frisbees, hacky sacs), unless the toy primarily functions as an educational/experimental tool (see 13.3.100.5.6 (1)(C)).
- Wearing Apparel (T-shirts, Scarves, Caps, Jackets, etc.)
- Umbrellas
- Golf Balls
- Candy and other food items
- Tote Bags *

* See the discussion at 13.3.100.5.5

In the absence of statutory authority to promote products such as Energy Star Legislation, EPA may not distribute novelty items that endorse the purchase or sale of commercial products.

13.3.100.5.4 Items Which May Be Appropriate

The list below provides examples of novelty items which may be purchased and distributed to the general public and to federal employees. A novelty item must be imprinted with Agency information, typically an environmental message, the Agency program office's URL (or information telephone number), or both. Imprinting a novelty item with only the EPA seal or Agency Identifier without additional Agency information is insufficient. If the unit acquisition cost of the item is \$2.00 or less, or \$6.00 or less for a green item (see 13.3.100.5.2) the item is presumed to meet the "necessary expense" test, unless it is a prohibited item (see 13.3.100.5.3).

Examples of items which may be appropriate include, but are not limited to, the following:

- Pens
- Pins
- Pencils
- Magnets
- Posters
- Buttons
- Signs
- Bumper Stickers
- Key Chains
- Water Bottles
- Plastic Cups
- Coffee Mugs Ceramic or Glass
- Drinking Glasses

13.3.100.5.5 Exceptions

The Agency can purchase an item if authorized by statute. For example, the Government Employees' Training Act (GETA) authorizes the use of appropriated funds "for the necessary expenses of the training." EPA also has authority under section 103 of the Clean Air Act, section 104 of the Clean Water Act, section 8001 of the Solid Waste Disposal Act and section 104(k)(6) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to provide training to the public. Therefore, GETA or an environmental statute authorizing training could serve as authority to purchase inexpensive or moderately priced tote bags. **The price of a tote bag must not exceed \$10.00 per bag and the tote bags must be needed to carry cumbersome or heavy conference training materials to, from, and at the training session(s) locations(s).** The acquisition procedures at 13.3.100.5.6 must also be met.

Novelty items that are prohibited under 13.3.100.5.3 may qualify as Agency informal recognition awards for Federal employees if the standards in EPA's Recognition Policy and Procedures Manual ([HYPERLINK "http://intranet.epa.gov/ohr/rmpolicy/ads/manuals/3130-A2.pdf"]) are

met.

EPA may have statutory authority to use appropriated funds to purchase items that recognize environmental achievements of non-Federal individuals and organizations. You may contact the Office of General Counsel or the Office of Regional Counsel for further guidance.

13.3.100.5.6 Acquisition Procedures

(a) **Requesting Office:**

(1) The requesting office must describe the outreach or educational purpose that will be served by acquiring the items. In providing this information, the program office shall provide the information that will be imprinted on each item and the expected cost per item including shipping and production or printing costs. Note that for a tote bag purchased under GETA or an environmental training statue, it is not necessary to have information printed on the tote bag, but the unit cost must be \$10.00 or less;

(2) If the requesting office is invoking the “green” item waiver on item ceiling price (i.e., more than \$2.00 per item, but less than \$6.00 per item), the requesting office must document why the items being purchased are “green” items (see 13.3.100.5.2.);

(3) If the requesting office intends to purchase a toy item that functions as an educational/experimental tool, the office must document how the item is being used as an educational/experimental tool and how the item’s use as an educational/experimental tool is the item’s primary use. The principal purpose for purchasing a toy item must be to use the toy as an educational/experimental tool and not claim that a toy with an agency message imprinted on it primarily functions as an educational tool because of the environmental message. For example, the Sunwise Frisbee is a Frisbee that changes color when exposed to UV radiation. This Frisbee itself has an educational/experimental use other than as a Frisbee. If the Sunwise Frisbee was a regular Frisbee with the just an environmental message imprinted on it, its purchase would be prohibited as a matter of policy.

(b) **COs Or Other Authorized Purchasers:**

(1) Consider the FAR 8.002, Priorities for use of Government supply sources, before using a commercial vendor;

(2) Obtain approval through the EPA Communications Product Review process:

[HYPERLINK

"http://otaqintranet.epa.gov/index.php?option=com_content&view=article&id=212&Itemid=269#_ga=1.253209356.448039515.1434475133"]

(3) Document the official contract or purchase order file with the information that substantiates the acquisition of the novelty items;

(4) Use discretion concerning items which are not addressed in this policy. COs or any other authorized purchasers must consult the Office of General Counsel on the propriety of procuring questionable items.

(5) Novelty items need not undergo a separate review (outside of that required by 13.3.100.5.6 (A)), for the imprint on the novelty item. Imprinting on three dimensional novelty items may be done by the local printing office or Government Printing Office (GPO) sources, but this is not a requirement. For further guidance on printing, please see the Office of Public Affairs (OPA) guidance Promotional Communications for EPA, dated July 2008. If you are uncertain whether a production method would constitute printing that must be referred to the EPA Printing Management Office to be done in-house or through GPO, you should contact the EPA Printing Management Office for further information.

Message

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EPA Administrator E. Scott Pruitt

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